NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

American Gem Sprinkler Co., Inc. and Road Sprinkler Fitters Local Union No. 669, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO. Case 5-CA-25312

February 27, 1996

DECISION AND ORDER

By Chairman Gould and Members Browning and Cohen

Upon a charge and first amended charge filed by the Union on April 25 and May 15, 1995, the General Counsel of the National Labor Relations Board issued a complaint on July 18, 1995, against American Gem Sprinkler Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On December 7, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On December 8, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letters dated August 8 and October 31, 1995, notified the Respondent that unless an answer were received by August 18, and November 13, 1995, respectively, a Motion for Summary Judgment would be filed.¹

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment. On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Maryland corporation with an office and place of business in Woodbine, Maryland, has been engaged in the installation, alteration, maintenance, repair, and service of fire sprinkler systems. During the 12-month period preceding issuance of the complaint, the Respondent provided services valued in excess of \$50,000 for other enterprises within the State of Maryland, including Fusion International, Inc., Fusion International, Inc., a Delaware corporation, is engaged in the manufacturing of high intensity ultraviolet curing equipment for drying inks and coatings for industrial applications at its Rockville, Maryland location and has received gross revenues in excess of \$1 million during the 12-month period preceding issuance of the complaint. During this same time period, Fusion International, Inc., purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Maryland. We find that Fusion International, Inc. and the Respondent are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act² and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time journeymen and apprentice sprinkler fitters engaged in the installation, alteration, maintenance, repair and service of automatic sprinkler and fire control systems; excluding all other employees, guards and supervisors as defined in the Act.

Since about 1988, and at all material times, the Union has been designated exclusive collective-bargaining representative of the unit and, since then, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a contract between the Union and the National Fire Sprinkler Association, Inc. (the Association). The Association is composed of various employers engaged in the installation, maintenance, and repair of sprinkler systems, one purpose of which is to represent its em-

¹ Although the General Counsel's motion indicates that these letters were served by both certified and regular mail but were returned unclaimed, failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

²The Board previously asserted jurisdiction over the Respondent in *American Gem Sprinkler Co.*, 316 NLRB 102 (1995).

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February 27, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

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Since about 1988, and at all material times, the Union has been designated exclusive collective-bargaining representative of the unit and, since then, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a contract between the Union and the National Fire Sprinkler Association, Inc. (the Association). The Association is composed of various employers engaged in the installation, maintenance, and repair of sprinkler systems, one purpose of which is to represent its em-

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ployer-members in negotiating and administering collective-bargaining agreements, the most recent of which was effective from March 29, 1991, to March 31, 1994. Since about March 29, 1991, the Respondent has been signatory to this agreement pursuant to its Assent and Interim Agreement as an independent contractor. At all times since at least March 29, 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about December 1, 1994, the Respondent changed the wages, hours, and working conditions for the unit. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

At all material times, James Dabbondanza has been the Union's agent for the purposes of collective bargaining with the Respondent. Since about May 5, 1995, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit unless James Dabbondanza ceased to act as the Union's agent for the purposes of collective bargaining with the Respondent.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing the wages, hours, and working conditions for the unit since about December 1, 1994, we shall order the Respondent to restore, on request, the terms and conditions of employment in effect before the Respondent's unlawful changes, and make the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. Backpay shall be computed in accordance with Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with inter-

est as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has failed and refused to bargain with the Union unless James Dabbondanza ceased to act as the Union's agent, we shall order the Respondent to bargain, on request, whether or not Dabbondanza is the Union's agent.

ORDER

The National Labor Relations Board orders that the Respondent, American Gem Sprinkler Co., Inc., Woodbine, Maryland, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Changing the wages, hours, or working conditions for the unit:

All full-time and regular part-time journeymen and apprentice sprinkler fitters engaged in the installation, alteration, maintenance, repair and service of automatic sprinkler and fire control systems; excluding all other employees, guards and supervisors as defined in the Act.

- (b) Failing or refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit because James Dabbondanza is acting as the Union's agent for the purposes of collective bargaining with the Respondent.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Restore, on request, the wages, hours, and working conditions of the unit in effect before its December 1, 1994 unlawful changes and make the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct, in the manner set forth in the remedy section of this decision.
- (b) On request, bargain with the Union as the exclusive collective-bargaining representative of the unit, whether or not James Dabbondanza is acting as the Union's agent.
- (c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (d) Post at its facility in Woodbine, Maryland, copies of the attached notice marked "Appendix." Cop-

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 27, 1996

| William B. Gould IV, | Chairman |
|-----------------------|----------|
| Margaret A. Browning, | Member |
| Charles I. Cohen, | Member |

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT change the wages, hours, or working conditions for the unit:

All full-time and regular part-time journeymen and apprentice sprinkler fitters engaged in the installation, alteration, maintenance, repair and service of automatic sprinkler and fire control systems; excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to bargain with the Road Sprinkler Fitters Local Union No. 669, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL—CIO, as the exclusive collective-bargaining representative of the unit because James Dabbondanza is acting as the Union's agent.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore, on request, the wages, hours, and working conditions of the unit in effect before our December 1, 1994 unlawful changes and make our unit employees whole for any loss of earnings and other benefits attributable to our unlawful conduct, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL bargain with the Union, on request, whether or not James Dabbondanza is acting as the Union's agent.

AMERICAN GEM SPRINKLER CO., INC.